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Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION

GLORIA S. SUNDQUIST, WILLIAM HANNAH, SHARON HANNAH, GLORIA REWERTS, THELMA J. BJORKLUND, GARY E. BJORKLUND, DUANE PETERSON, VIRGINIA PETERSON, LE COE, JAMES C. KING, STEPHANIE A. KING, MITCHELL HAAS, ANGELA HAAS, BOB WALLER, SANDRA CARL, KATHLEEN DUDLEY, KURT	**COMPLAINT AND DEMAND FOR JURY TRIAL** Civil No. Judge ____________

SCHATTE, KATHLEEN E. JENSEN, MICHAEL BASHAM, WANDA BASHAM, JOSEPH B. MATTINGLY, KAREN HOWARD, MERLE SHORTMAN, MONA SHORTMAN, BRIAN HARRELL, SCOTT CALVI, DAVID MOMBERG, DANETTE MOMBERG, LAVERN GUSE, MARY GUSE, JAMES P. HIGGINS, DONALD R. ERDMANN, LORI R. KAPHAMMER, RAYMOND J. CROFF, J.W. EATON JR., LYNN EATON, CATHERINE WATSON, CRAIG A. RUDE, WANDA J. RUDE, JILL MATTINGLY, CAROLE D. BOMAR, WILLIAM L. MCCAULEY, MATTHEW EMBODY, ABBY EMBODY, MARK T. FLAHERTY, AND ANNE M. STEPHENS

Plaintiffs,

vs.

ASHLAND INC., a Kentucky corporation; CHS INC., a Minnesota corporation; CONOCOPHILLIPS COMPANY, a Delaware corporation; BLACK EAGLE LLC, a Delaware corporation; UNION OIL COMPANY OF CALIFORNIA, d/b/a UNOCAL CORPORATION, a California corporation; and JOHN DOES 1-30, inclusive,

Defendants.

COME NOW the Plaintiffs, by and through their counsel of record, and for their Complaint and Demand for Jury Trial, allege as follows:

PARTIES, JURISDICTION, AND VENUE

1. Plaintiffs (as named in the caption) are all citizens and residents of Glacier County, Montana. Plaintiffs all own real property in Glacier County, Montana, and their real properties have been impacted and/or contaminated by Defendants' petroleum releases, including but not limited to crude oil, condensate, and/or other petroleum constituents, each of which is toxic, hazardous, and abnormally dangerous (referred to hereinafter as "Hazardous Petroleum Material"), caused by Defendants' acts or omissions, from the area known as "Tank Hill," "Tank Hill Farm," "Tank Hill Farm Facility," or "Tank Hill Facility" (referred to hereinafter as "Tank Hill"), in or near the City of Cut Bank, Glacier County, Montana (referred to hereinafter as "Cut Bank").

2. Defendant Ashland Inc. is a business entity incorporated pursuant to the laws of the State of Kentucky, with its principal place of business in the State of Kentucky. On information and belief, Ashland Inc. is the successor in interest to Scurlock Permian Corporation and Permian Operating, LP (collectively referred to hereinafter as "Ashland"). Ashland does and/or did business in or near Cut Bank. Ashland is responsible for the Hazardous Petroleum Material emanating from the Tank Hill area that is impacting and/or contaminating Plaintiffs' properties in Glacier County, Montana.

3. Defendant CHS Inc. is a business entity incorporated pursuant to the laws of the State of Minnesota, with its principal place of business in the State of Minnesota. On information and belief, CHS Inc. is the successor in interest to Cenex, Inc. (collectively referred to hereinafter as "CHS"). CHS does and/or did business in or near Cut Bank. CHS is responsible for the Hazardous Petroleum Material emanating from the Tank Hill area that is impacting and/or contaminating Plaintiffs' properties in Glacier County, Montana.

4. Defendant ConocoPhillips Company is a business entity incorporated pursuant to the laws of the State of Delaware, with its principal place of business in the State of Texas. On information and belief, ConocoPhillips Company is the successor in interest to Conoco Inc., Conoco Pipeline Company, Phillips Petroleum Company, and their collective predecessors that owned property or operated in the Tank Hill area, including but not limited to Continental Oil Company, Continental Pipeline Company, Home Oil & Refining Company, and A.B. Cobb Company (collectively referred to hereinafter as "ConocoPhillips"). ConocoPhillips does and/or did business in or near Cut Bank. ConocoPhillips is responsible for the Hazardous Petroleum Material emanating from the Tank Hill area that is impacting and/or contaminating Plaintiffs' properties in Glacier County, Montana.

5. On information and belief, Black Eagle LLC and/or Black Eagle, Inc. is a business entity incorporated pursuant to the laws of the State of Delaware, with

its principal place of business in the State of Texas. Black Eagle LLC and/or Black Eagle, Inc. is the successor in interest to HRM Montana LLC, Montana Refining Company, Montana Refining Company, a limited partnership, and Navajo Northern, Inc. (collectively referred to hereinafter as "Black Eagle"). Black Eagle does and/or did business in or near Cut Bank. Black Eagle is responsible for the Hazardous Petroleum Material emanating from the Tank Hill area that is impacting and/or contaminating Plaintiffs' properties in Glacier County, Montana.

6. Defendant Union Oil Company of California, d/b/a Unocal Corporation is a business entity incorporated pursuant to the laws of the State of California, with its principal place of business in the State of California. On information and belief, Union Oil Company of California, d/b/a Unocal Corporation, is a wholly owned subsidiary of Chevron Corporation. On information and belief, Union Oil Company of California, d/b/a Unocal Corporation, and/or Chevron Corporation is the successor in interest to certain business entities that owned property or operated in the Tank Hill area, including but not limited to Glacier Production Company and International Pipeline Company. Collectively, Union Oil Company of California, d/b/a Unocal Corporation, Chevron Corporation, and the certain business entities that owned property or operated in the Tank Hill area, including but not limited to Glacier

Production Company and International Pipeline Company, which either Union Oil Company of California, d/b/a Unocal Corporation or Chevron Corporation are successors in interest to, will be referred to collectively hereinafter as "Union Oil." Union Oil does and/or did business in or near Cut Bank. Union Oil is responsible for the Hazardous Petroleum Material emanating from the Tank Hill area that is impacting and/or contaminating Plaintiffs' properties in Glacier County, Montana.

7. The true names and capacities of the defendants named herein as John Does 1-30, inclusive, are unknown to Plaintiffs at this time, who will therefore bring this action against said defendants by fictitious names. Plaintiffs will seek leave to amend their complaint to state the true names and capacities of John Does 1-30 when the same have been ascertained, together with further charging allegations, as appropriate. Plaintiffs are informed and believe and thereon allege that each of said fictitiously named defendants may be legally responsible in some manner for the occurrences alleged herein and that Plaintiffs' damages as alleged herein may have been proximately caused in part by said fictitiously named Defendants' unlawful acts or omissions.

8. This Court has subject matter jurisdiction under 28 U.S.C. § 1332 on the basis of diversity of citizenship and on the ground that the amount in controversy exceeds the sum or value of $75,000, exclusive of interest and costs.

9. This Court has personal jurisdiction over Defendants because Defendants do business in Montana and Plaintiffs' claims arise from Defendants' acts or omissions that occurred in and around Tank Hill in Glacier County, Montana and Defendants' acts or omissions impacted and/or contaminated Plaintiffs' real properties in Glacier County, Montana.

10. Venue is proper in this district pursuant to 28 U.S.C. § 1391, Local Rule 3.2 of the Local Rules of Procedure of the United States District Court for the District of Montana, and Title 25, Chapter 2, Part 122 of the Montana Code.

FACTS COMMON TO ALL CLAIMS

11. Defendants (as named in caption) operated and either owned and/or leased the tanks, pipelines, pump stations, and/or related equipment and items on or near Tank Hill or Cut Bank.

12. Tank Hill serves as a receiving and redistribution center for numerous crude oil pipelines that converge on and distribute out from Tank Hill. Tank Hill handles the Hazardous Petroleum Material.

13. Tank Hill is an active crude oil storage facility. Current operations at Tank Hill include crude oil storage and transportation.

14. Tank Hill has been an active crude oil transportation and temporary storage terminal since the early 1930s.

15. In or around Tank Hill, Defendants negligently, intentionally, knowingly, or with maliciously reckless disregard of the consequences on the environment—and to Plaintiffs' rights—caused the discharge of large quantities of the Hazardous Petroleum Material into the soils, surface waters, and groundwater in and near Cut Bank.

16. These discharges in and around the Defendants' Tank Hill operations migrated, and continue to migrate, onto the real property owned by Plaintiffs, causing contamination on their real property of the Hazardous Petroleum Material.

17. After discovering the discharge of the Hazardous Petroleum Material in and around their operations at Tank Hill and/or Cut Bank, Defendants made a conscious decision, predicated upon cost considerations, to abstain, to the extent possible, from containing, mitigating, and cleaning up the Hazardous Petroleum Material in and around Tank Hill, opting instead to allow said material to continue migrating through the soils, surface waters, and groundwater in and near Cut Bank and onto Plaintiffs' real properties.

18. Defendants, during the normal course of business, contaminated and polluted Plaintiffs' real properties with the Hazardous Petroleum Material, thereby exposing them to risks to their health and safety, and the diminution in value to their real properties and the community in which they reside.

19. The Hazardous Petroleum Material released by Defendants has migrated off the sites owned and/or operated by Defendants, and continues to do so, forming underground plumes of contamination in and near Cut Bank, and in and near Plaintiffs' real property within Cut Bank, thereby constituting a threat to persons occupying and using real property in or near Cut Bank.

20. Defendants, and each of them, knew the extent of the Hazardous Petroleum Material released by Defendants and knew that Defendants' cleanup efforts, where taken, were, and continue to be, inadequate to reduce the risks and damages to real property in and around Cut Bank and in and around Plaintiffs' real properties.

21. In addition, Defendants, and each of them, knew the hazards associated with the migration of the Hazardous Petroleum Material and failed to take reasonable steps to contain and clean up the contamination from the Hazardous Petroleum Material.

22. In addition, Defendants, and each of them, failed to warn Plaintiffs, and prior owners of their real properties, that their health, welfare, and property values had been, and continue to be, placed in serious jeopardy due to the presence of the Hazardous Petroleum Material that escaped, spread across, and seeped into and under their homes, yards, businesses, institutions, and properties.

23. As a direct and proximate cause of Defendants' conduct, acts and omissions, as set forth above and below, Plaintiffs have suffered injuries, damages and losses, which include, but are not limited to: loss in real property values; the need for, and cost of, investigation and restoration of real property; loss of unfettered use and quiet enjoyment of real property; residual losses in value; incidental and consequential costs; inconvenience, annoyance, and discomfort.

FIRST CAUSE OF ACTION

(Private Nuisance)

24. Plaintiffs reallege the allegations contained in the previous paragraphs.

25. Defendants' actions, as alleged above, violate Title 27, Chapter 30, Parts 1 and 3 of the Montana Code, and Montana common law.

26. Plaintiffs have proprietary interests in certain real and personal property in the areas affected by the contamination and Plaintiffs have the right to the exclusive use and quiet enjoyment of their properties.

27. Defendants' ownership and/or control and/or management of their facilities and operations on or near Tank Hill, their failure to properly contain their Hazardous Petroleum Material on or near Tank Hill and/or in or near Cut Bank, and the continuous release and/or movement and/or presence of the Hazardous

Petroleum Material in the manner described above constitutes a nuisance which has contaminated and degraded Plaintiffs' properties.

28. Defendants' nuisance is temporary. Defendants have the ability to abate this nuisance, but have maliciously failed and refused to do so.

29. Such conduct by Defendants was and is a continuing nuisance.

30. Unless the nuisance is abated, Plaintiffs' properties and rights to the use and enjoyment of their properties will be progressively further damaged and further jeopardized.

31. As a direct and proximate result of Defendants' continuing nuisance, Plaintiffs have suffered, and continue to suffer, damage to their private properties.

SECOND CAUSE OF ACTION

(Public Nuisance)

32. Plaintiffs reallege the allegations contained in the previous paragraphs.

33. Defendants' actions, as alleged above, violate Title 27, Chapter 30, Part 2 of the Montana Code, and Montana common law.

34. Plaintiffs are members of the public who reside, work, own property, and conduct personal and business affairs within and around Cut Bank and are entitled to do so without wrongful or undue interference in their conduct of those activities.

35. The conduct of the Defendants constitutes a nuisance in that it is specially injurious and offensive to the senses of Plaintiffs, specially interferes with and disturbs their comfortable enjoyment of their life and properties, and unlawfully prevents the customary use of their properties and residences. The contamination caused by Defendants' activities, as herein described, affects a considerable number of persons, including the entire community surrounding Plaintiffs' properties.

36. To the extent the nuisance is not also a private nuisance, the nuisance is especially injurious to Plaintiffs, in that they are members of the public who reside or own property within the area immediately affected by the contamination. Plaintiffs therefore have suffered interference with and injury to the use and enjoyment of their properties, which is different in kind from the injury suffered by the general public.

37. Unless the nuisance is abated, Plaintiffs' properties and rights to the use and enjoyment of their properties will be progressively further damaged and further jeopardized.

38. As a direct and proximate result of the public nuisance caused by the Defendants as alleged herein, Plaintiffs suffered damages as herein alleged.

THIRD CAUSE OF ACTION

(Negligence)

39. Plaintiffs reallege the allegations contained in the previous paragraphs.

40. Defendants owed Plaintiffs a duty to act with reasonable care so as not to jeopardize their properties, health, welfare, and right to a clean and healthful environment.

41. Defendants breached their duty of reasonable care by carelessly and recklessly handling, storing, releasing, disposing of, and failing to control, contain and remediate the Hazardous Petroleum Material released from Defendants' facilities and operations in and around Tank Hill or in and around Cut Bank, as herein alleged, resulting in the release of the Hazardous Petroleum Material onto Plaintiffs' properties.

42. Defendants' negligence, in addition to that hereinabove alleged, includes:

a) failure to use reasonable care in the management and/or operation of Defendants' facilities and operations in and around Tank Hill or in and around Cut Bank by causing, allowing, or contributing to the release of the Hazardous Petroleum Material from Tank Hill into, onto, and/or below Plaintiffs' private properties;

b) failure to cease and/or shut down the operations at Tank Hill to avoid continuing releases of the Hazardous Petroleum Material;

c) failure to promptly clean up and remediate the release of the Hazardous Petroleum Material on Plaintiffs' properties;

d) failure to adequately manage and monitor Tank Hill to prevent the release of the Hazardous Petroleum Material into the ground and spreading into Plaintiffs' properties;

e) failure to adequately warn Plaintiffs of the existence of past, present, and future contamination and human health risks from the release of the Hazardous Petroleum Material;

f) failure to prevent the contamination of soil and groundwater from the Hazardous Petroleum Material and the subsequent migration of these materials through the soil and groundwater to Plaintiffs' properties;

g) failure to take appropriate measures to prevent the spread of the Hazardous Petroleum Material contamination;

h) failure to remediate the Hazardous Petroleum Material contamination in a timely and effective manner; and

i) failure to comply with applicable industry standards, internal safety rules, and state and federal safety laws, rules, regulations, and standards.

43. As a direct and proximate result of Defendants' breach of their duty of reasonable care, Plaintiffs have suffered, and continue to suffer, damage to their real properties.

44. Defendants are liable for all such damage and detriment proximately caused to Plaintiffs' properties by Defendants' negligent acts or omissions.

FOURTH CAUSE OF ACTION

(Trespass)

45. Plaintiffs reallege the allegations contained in the previous paragraphs.

46. At all times relevant, Plaintiffs owned and were in lawful possession of certain real and personal properties within the areas affected by the contamination.

47. Defendants' release of the Hazardous Petroleum Material by way of soil, groundwater, and air; their intentional decision not to contain the Hazardous Petroleum Material on Tank Hill; and their decision to allow the Hazardous Petroleum Material to naturally migrate to Plaintiffs' properties, constitutes a trespass to their properties as recognized by Montana common law.

48. Defendants have the ability to abate such trespass, but have maliciously failed and refused to do so.

49. Such conduct by Defendants was and is a continuing trespass.

50. As a direct and proximate result of Defendants' continuing wrongful trespass, Plaintiffs have suffered, and continue to suffer, damage to their real and personal properties.

51. Defendants are liable for all such damage and detriment proximately cause by their wrongful trespass.

FIFTH CAUSE OF ACTION

(Strict Liability)

52. Plaintiffs reallege the allegations contained in the previous paragraphs.

53. The storage, transportation, and release of large quantities of the Hazardous Petroleum Material, and the operation of Tank Hill in and adjacent to a residential area is an abnormally dangerous and ultra-hazardous activity.

54. By releasing large amounts of the Hazardous Petroleum Material on Tank Hill, and by then failing to contain the Hazardous Petroleum Material on Tank Hill, Defendants created, and still create, an unreasonably dangerous condition causing damage to Plaintiffs and their real properties.

55. As a direct and proximate result of this unreasonably dangerous condition created by Defendants, Plaintiffs have suffered, and continue to suffer, damage to their real properties for which Defendants are strictly liable.

56. Defendants are liable for all such damage and detriment to Plaintiffs' private properties.

SIXTH CAUSE OF ACTION

(Wrongful Occupation)

57. Plaintiffs reallege all of the allegations contained in the previous paragraphs.

58. Defendants' actions, as alleged above, constitute a wrongful occupation of Plaintiffs' private properties in violation of Title 27, Chapter 1, Part 318 of the Montana Code, and Montana common law.

59. As a direct and proximate result of Defendants' continuing wrongful occupation, Plaintiffs have suffered, and continue to suffer, damage to their private properties.

60. Defendants are liable for all such damage and detriment proximately caused by their wrongful occupation.

SEVENTH CAUSE OF ACTION

(Violation of the Montana Constitution)

61. Plaintiffs reallege all the allegations contained in the previous paragraphs.

62. The Defendants, as owners and/or operators of Tank Hill, are the source of the release of the Hazardous Petroleum Material impacting and/or contaminating Plaintiffs' properties.

63. Plaintiffs have the following inalienable rights under Article II, Section 3, of the Montana Constitution:

> All persons are born free and have certain inalienable rights. They include the right to a clean and healthful environment and the rights of pursuing life's basic necessities, enjoying and defending their lives and liberties, acquiring, possessing and protecting property, and seeking their safety, health and happiness in all lawful ways. In enjoying these rights, all persons recognize corresponding responsibilities.

64. The past, present, and continuing Hazardous Petroleum Material contamination of Cut Bank and the properties of Plaintiffs violates their inalienable right to a clean and healthful environment.

65. As a direct and proximate result of the violation of the inalienable enumerated rights of Plaintiffs under the Montana Constitution, they have sustained and will continue to sustain damages as herein alleged.

EIGHTH CAUSE OF ACTION

(Misconduct Warranting Punitive Damages)

66. Plaintiffs reallege all the allegations contained in the previous paragraphs.

67. Defendants knew that if they did not contain the Hazardous Petroleum Material on Tank Hill, the Hazardous Petroleum Material would continue migrating to Plaintiffs' properties.

68. Defendants have refused to conduct an appropriate cleanup of the Hazardous Petroleum Material in Cut Bank and on Plaintiffs' properties.

69. Defendants have intentionally and knowingly chose not to contain the Hazardous Petroleum Material on their own properties.

70. Instead, Defendants knowingly and intentionally released the Hazardous Petroleum Material onto and into Plaintiffs' private properties.

71. Defendants' misconduct evidences conscious and intentional disregard for the high probability of injury to surrounding private properties, including Plaintiffs' properties, and to act with indifference to the high probability of injury to the surrounding private properties, including Plaintiffs' properties.

72. As a result of this misconduct, Defendants are liable for punitive damages as allowed by Title 27, Chapter 1, Parts 220 and 221 of the Montana Code Annotated.

73. Plaintiffs request punitive damages be awarded against Defendants in an amount sufficient to punish Defendants and to encourage Defendants, and others similarly situated, to refrain from engaging in such misconduct in the future.

DEMAND FOR TRIAL BY JURY

Plaintiffs hereby demand trial by jury.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for relief as follows:

1. For Plaintiffs' damages and a reasonable amount to compensate Plaintiffs for all harm they have suffered as a result of Defendants' conduct;

2. For restoration damages so that Plaintiffs' properties, which are Plaintiffs' personal residences, are restored to their pre-contamination condition that existed prior to the Hazardous Petroleum Material contamination caused by the foregoing acts of the Defendants. Plaintiffs possess a reason personal and individual to each of them to have each of their properties restored to their pre-contamination condition.

3. For damages for Plaintiffs' annoyance and discomfort over the loss and prospective loss of property value, economic opportunities, and ways of life;

4. For damages to compensate Plaintiffs for the loss of use and enjoyment of legal rights as a result of the contamination;

5. For damages to compensate Plaintiffs for costs incidental to the contamination, such as analysis and testing costs to determine the nature and extent of the contamination;

6. For Plaintiffs' damages for relocation and alternate living expenses until their properties are restored;

7. For attorneys' fees and costs as may be allowable by law;

8. For stigma damages;

9. For punitive damages in an amount sufficient to punish Defendants and to encourage Defendants, and others similarly situated, to refrain from engaging in such malicious and oppressive conduct in the future; and

10. For such other and further relief as the Court deems just and proper.

DATED this 6th day of September, 2013.

/s/ Michael D. Cok

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